

REMARKS / DISCUSSION OF ISSUES

In response to the Office action¹ mailed on 19 May 2009, the applicants respectfully request reconsideration. All of the issues raised in the Office action have been carefully considered and are addressed herein.

Claims 1-12 and 14-29 are pending in the application.

I. Rejection of claims 1, 14, and 22 under 35 U.S.C. 112, second paragraph.

The Examiner rejects claims 1, 14, and 22 under 35 U.S.C. 112, second paragraph. The applicants respectfully traverse this rejection.

The Examiner questions "What is a "fusing voltage"? What is a "leakage threshold voltage"?" (Office action, page 2, lines 15-16). The applicants respectfully request the Examiner's attention to the applicants' FIG. 2 and page 5, line 10 through page 7, line 2, of the applicants' specification, at which these terms, and the principles behind them, are clearly defined.

In the interest of advancing prosecution in this case, claims 1, 14, and 22 are amended to specifically recite that the voltage range between these voltage limits is such that a pulse current applied to the light emitting element will be substantially greater than the leakage current of the light emitting element. The applicants respectfully maintain that the scope of the claims is unchanged, because it merely incorporates a definition that is provided in the specification into the claims.

With regard to the use of the term "substantially":

In Anchor Wall Sys. v. Rockwood Retaining Walls, Inc., 340 F.3d 1298 (Fed. Cir. 2003), the court held that "the phrase 'generally parallel' envisions some amount of deviation from exactly parallel," and that "words of approximation, such as 'generally' and 'substantially,' are descriptive terms 'commonly used in patent claims' to avoid a strict numerical boundary to the specified parameter." In Verve, LLC v. Crane Cams, Inc., 311 F.3d 1116, 1120 (Fed. Cir. 2002), the court stated: "the term 'substantially' is a descriptive term commonly used in patent claims to 'avoid a strict numerical boundary to the specified parameter,'" and in Liquid Dynamics, 355 F.3d at 1368, the court stated that the "term 'substantial' is a meaningful modifier implying 'approximate,' rather than 'perfect'."

¹ The Office action contains statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, the applicant(s) decline to automatically subscribe to any statement or characterization in the Office action.

Accordingly, the applicants respectfully maintain that claims 1, 14, and 22 are patentable under 35 U.S.C. 112, second paragraph, and respectfully request the withdrawal of this rejection.

II. Rejection of claims 1-12 and 14-29 under 35 U.S.C. 103(a)

The Examiner rejects claims 1-8 and 14-16² under 35 U.S.C. 103(a) over Sanford et al. (USP 6,580,657, hereinafter Sanford) and Andry et al. (USPA 2003/0094616, hereinafter Andry). The applicants respectfully traverse this rejection.

The combination of Sanford and Andry fails to teach or suggest applying a voltage within a specified voltage range that is above a fusing voltage and below a leakage threshold voltage to a light emitting element, as specifically claimed in claim 1, upon which claims 2-12 depend. Claim 14, upon which claims 15-21 depend, and claim 22, upon which claims 23-29 depend, include similar features.

The Examiner acknowledges that Sanford fails to teach applying a voltage within a specified voltage range that is above a fusing voltage and below a leakage threshold voltage to a light emitting element, and asserts that Andry discloses these features at [0002] [0003] [0009] [0010]. This assertion is incorrect, and fails to comply with the requirements of 37 CFR 1.104(c)(2) and MPEP 707.

The applicants respectfully note that it is the duty of the Examiner to specifically identify each and every element and limitation of a claim in the cited reference as per 37 CFR 1.104(c)(2) and MPEP 707, which explicitly state that "the particular part relied on must be designated" and "the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

² The Office action specifically rejects claims 1-8 and 14-16, but in the presentation of the basis for the rejection, the Examiner references claims 9-12 and 17-29. The applicants assume that the Examiner intended to recite that claims 1-12 and 14-29 are rejected under 35 U.S.C. 103(a) over Sanford and Andry.

The Office action is not in compliance with 37 C.F.R. §1.104(c)(2) and MPEP 707 because the pertinence of Andry with respect to the cited elements of claims 1 and 14 is not clearly explained. The goal of prosecution has not been met under MPEP 706 because the Office has not clearly articulated its rejection so that the applicants could have the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.

The Examiner asserts that Andry teaches applying a voltage within a specified voltage range that is above a fusing voltage and below a leakage threshold voltage to a light emitting element at paragraphs [0002] [0003] [0009] [0010], without a reference to where, within these four paragraphs, either a fusing voltage or a leakage threshold voltage is referenced by Andry. The applicants note that a citation at the paragraph level, and particularly to over 70 lines of text within the cited four paragraphs, is not sufficient to specifically identify the referenced elements of claims 1 and 14 in Andry, as required by 37 CFR 1.104(c)(2) and MPEP 707.

Further, at the cited text, Andry specifically teaches that the voltage applied to the pixels ranges "between about $-V_{th}$ to 20V" (Andry [0010], lines 5-7). The applicants respectfully maintain that a negative voltage ($-V_{th}$) cannot be above a pixel's fusing voltage, as the term fusing voltage is defined in the applicants' specification and claims.

Because the Examiner fails to specifically identify where the combination of Sanford and Andry teaches applying a voltage within a specified voltage range that is above a fusing voltage and below a leakage threshold voltage to a light emitting element, and because the combination of Sanford and Andry fails to teach these features, as specifically claimed in each of claims 1, 14, and 22, the applicants respectfully maintain that the rejection of claims 1-12 and 14-29 under 35 U.S.C. 103(a) over Sanford and Andry is unfounded, and should be withdrawn.

In view of the foregoing, the applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

/Robert M. McDermott/
Robert M. McDermott, Esq.
Reg. 41,508
804-493-0707

Please direct all correspondence to:
Corporate Counsel
PHILIPS IP&S
P.O. Box 3001
Briarcliff Manor, NY 10510-8001